

No. 252.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1923.

FIRST NATIONAL BANK IN ST. LOUIS, *Plaintiff in Error,*

vs.

STATE OF MISSOURI AT THE INFORMATION OF JESSE W.
BARRETT, ATTORNEY GENERAL, *Defendant in Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF
MISSOURI.

ANSWER OF DEFENDANT IN ERROR TO MO-
TION OF THE UNITED STATES FOR LEAVE
TO APPEAR AS AMICUS CURIAE.

Mr. Solicitor General Beck, during the week prior to May 7, 1923, personally presented to this Court in this case, for filing, a brief prepared by John A. Garver, Esq., as counsel for The National City Bank

of New York and The Chemical National Bank of New York, as *amici curiae*. This brief supported the position of the plaintiff in error. The Solicitor General, therefore, then had knowledge of this case.

The case was argued May 7, 1923.

On May 21, 1923, this Court ordered a reargument on a single question named.

In September, 1923, the plaintiff in error served and filed its Substituted Brief in this case which, following the plan of its original brief, did not confine itself to the issue named by the Court but covered the whole case.

The pendency of this branch bank case has been known to bankers throughout the country and undoubtedly to the Secretary of the Treasury.

Last week the Solicitor General of the United States wired the Attorney General of Missouri, he would on October 15, 1923, ask this Court for leave to intervene on behalf of the Government.

Now, on October 15, 1923, with the case set for hearing November 12, 1923, Solicitor General Beck, on behalf of the Government at the instance of the Secretary of the Treasury, is submitting to the Court a printed application (a copy of which was never served on the Attorney General of Missouri, a point, however, hereby waived) for leave to file a brief on "the question upon which the Court has directed reargument and indeed the questions involved on the merits of the case as well." He asks "to be heard orally and by brief."

The application is to the effect that the Solicitor General will, if permitted, file a brief and argue orally on the side of the plaintiff in error.

We may say a copy of the printed motion of the Government was only secured for counsel of defendant in error at 4:45 p.m., October 13, 1923, after application had on that day been made for it.

The plaintiff in error is also applying on this 15th of October, 1923, to this Court for a reargument of the entire case because it states that the Attorney General of the United States has recently rendered an opinion to the Secretary of the Treasury affecting the question of the right of national banks to engage in branch banking, a copy of which opinion is attached to its application. It does not ask leave to file this opinion along with its Substituted Brief filed in September, 1923. It asks for "a reargument of the entire case." Whether it desires to file a second Substituted Brief or any further brief is not clear.

Under the practice of this Court these applications, we understand, will probably in usual course not be passed on until October 22, 1923.

The hearing date as stated is November 12, 1923.

We say that the application of the Government is inexcusably late and for that reason should be denied.

We can not know how the Court may view these applications.

We respectfully submit that the right and reason of the matter requires, if the application of the Government is granted, and if the hearing date of November 12, 1923 is retained:

(1) That the Government be required to file and serve its brief on or before October 31, 1923. (Whatever date may be fixed for the Government's brief, we assume will likewise be the date for the brief, if any, on any feature of the case, that the Court may allow

plaintiff in error to file, in addition to its Substituted Brief, which was filed and served in September, 1923.)

(2) That defendant in error file and serve its answering brief on November 10, 1923.

Respectfully submitted,

JESSE W. BARRETT,
Attorney General of Missouri.
ROBERT C. MORRIS,
HAROLD R. SMALL,
Of Counsel,
For Defendant in Error.

Washington, D. C.,
October 15, 1923.